

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Reexamination of the Comparative) MM Docket No. 95-31
Standards for New Noncommercial)
Educational Applicants)

To: The Commission

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REPLY COMMENTS OF THE ADVENTIST RADIO NETWORK, INC.

The Adventist Radio Network, Inc. ("ARN") hereby submits its Reply to Comments of other parties which were filed in the above-identified proceeding on May 15, 1995.

ARN is a nonprofit membership organization whose member radio stations are licensed either to institutions affiliated with the Seventh-day Adventist Church or to other entities owned or controlled by individuals who are members of the Seventh-day Adventist Church. There are seventeen member radio stations in the United States, sixteen of which are noncommercial FM stations operating on reserved frequencies. 1/

ARN agrees with and supports much of what has been stated in the Comments filed to date in this proceeding. The current regularly used comparative analysis for selecting a noncommercial permittee from among mutually exclusive

1/ The noncommercial member stations are KACS, Chehalis, Washington; KADV, Modesto, California; KARM, Visalia, California; KCDS, Angwin, California; KEEH, Spokane, Washington; KGTS, College Place, Washington; KJCR, Keene, Texas; KSDA-FM, Agat, Guam; KSGN, Riverside, California; KSOH, Wapato, Washington; KTSY, Caldwell, Idaho; WAUS, Berrien Springs, Michigan; WDNX, Savannah, Tennessee; WGTS-FM, Takoma Park, Maryland; WOCG, Huntsville, Alabama; and WSMC-FM, Collegedale, Tennessee.

applicants leaves much to be desired. ARN agrees with those who reject the concept of time-sharing as an appropriate comparative issue. ARN also agrees with those who have argued that an applicant's proposal to construct auxiliary power facilities should not be a comparative issue.

On the positive side, ARN agrees with those who have favored the use of comparative coverage as an issue, especially where it involves providing service to areas and populations unserved or underserved by noncommercial radio. The applicant who proposes to provide new noncommercial service to unserved or underserved areas and populations deserves a preference for promoting and implementing efficient use of the spectrum.

However, ARN also disagrees with some of the things that have been stated in the Comments filed in this proceeding. Chief among these is the primary approach espoused by the Association of America's Public Television Stations and National Public Radio in their Joint Comments.

The first element of the noncommercial comparative issue as advanced by APTS and NPR in their Joint Comments is drafted as follows:

(a) When evaluated in light of the overall proposal of the applicant, which applicant will provide a local educational program service that best serves the needs of the community?

APTS/NPR Joint Comments, p. 2. As phrased here, this sentence announces lofty principles with which hardly anyone would disagree. This statement represents the ultimate comparative issue. It should be the Commission's paramount task in the context of a comparative proceeding involving mutually exclu-

sive applicants to find the answer to that question. The devil, of course, is in the details.

The problem begins in APTS/NPR's development of the issue with factors which they believe would be relevant. The first and second of these factors as stated on page 2 of the Joint Comments are:

(i) whether the governing board of the applicant is representative of the community, including its racial, ethnic, and gender composition, and the various educational, cultural and other groups in the community;

(ii) whether the applicant is integrated into the educational, cultural, social and civic organizations and institutions in the community;

APTS/NPR say that the "Commission's ultimate objective . . . must be to select the applicant that will provide the most responsive program service, . . ." Ibid. Without explication, they arrive at the conclusion that the applicant who will provide the most "responsive program service" will be the applicant with a well-connected governing board which is an ethnic and cultural mirror image of the community. ARN believes that this conclusion is unfounded. APTS/NPR present no empirical evidence to support their proposition that the most politically correct (for the moment) gathering of the community's alleged leading lights would be any more capable or willing to produce a "responsive program service" than the principals and supporters of a competing applicant who have the real experience, expertise, energy, interest and will-power to deliver a truly meaningful program service despite their possible lack of political connections and/or savoir-faire.

The lack of empirical data to support APTS/NPR's theory is a critical flaw in the proposal. A lack of empirical information about the impact that the commercial comparative hearing process was having on the make-up and conduct of the commercial broadcasting industry led to the downfall of that process. After 30+ years of commercial comparative hearings, the Commission was unable to say exactly what influence the process had had on the industry and the programming being supplied to the nation. See, Bechtel v. FCC, 10 F.3d 875 (D.C.Cir. 1993).

Furthermore, and worse, the process suggested here by APTS/NPR would probably lead to artificial warehousing of a community's notables by applicants competing to build the best who's who list for their respective governing boards. One is reluctant to imagine that the nation's eleemosynary community could get caught up in such sordid fervor. But there is really no reason to doubt that some of the worst features of the now discredited comparative selection process for commercial stations would not also crop up in the noncommercial realm once similar parameters are introduced (which to this point, have been absent).

In the heyday of the commercial comparative hearings of the mid-1980's, the practice of "renting" a "front" person with as many of the preferential characteristics as possible was notorious. Sly applicants for choice frequencies suddenly became serious business partners with a locally residing minority woman who spent 80 hours a week as a cheerleader for some local civic institution or project. It was discovered upon closer examination, that many of these "fronts" had little

or no real interest in broadcasting or in providing their communities with any sort of program service -- responsive or otherwise. They came along for the ride and the quick buck.

If the Commission were to adopt the APTS/NPR suggestion about preferences for certain characteristics of the membership of the applicant's governing board, it would open the door to similar types of abuses. While there may not appear to be quick bucks to be made as a noncommercial rented frontpiece, there may be other less tangible rewards of interest to some people, such as the prestige of public association with persons of perceived status in and out of the media.

It takes great quantities of enthusiasm and energy to bring a new station to fruition. There is nothing about the APTS/NPR proposal which suggests that its approach will produce the applicant with the best supplies of that enthusiasm and energy. The people who have those commodities coupled with an interest in building and operating a new station will most likely voluntarily become an applicant or associate themselves with an applicant. They will naturally be found in the thick of the process. There will be no need for the Commission to offer incentives for prospective applicants to attempt to recruit such people. In any event, as pointed out above, such recruitment attempts conducted for legalistic reasons would often lead to artificial results.

The comparative selection criteria should be good predictors of what to expect from an applicant if it becomes a permittee and licensee. There may be nothing inherently wrong

in creating a governing board in the manner proposed by APTS/NPR, and the result might be a grouping of good people. But the APTS/NPR proposed criteria is based largely upon who the applicant's board members are and does not predict what to expect they will actually do.

ARN suggests that instead, the Commission should reward with comparative preferences the past behavior that is truly predictive of the person's likely future course of action. Applicants with track records, or applicants composed of principals who have demonstrated track records, of involvement in community affairs and/or civic and charitable activities beneficial to the community should earn comparative preferences because such behavior is likely to continue and to be directed toward the new proposed station. An applicant peopled with such principals is most likely to operate the station for the overall best benefit of the community.

APTS/NPR's third factor of relevance is:

(iii) whether the applicant has ascertained the educational, cultural, social and civic needs of the community and proposed a program service that is responsive to those ascertained needs and will enhance the intellectual, cultural, social and educational life of the community;

Joint Comments, page 3. The principle underlying the first portion of this factor as described is beyond reproach. Clearly, the applicant who knows the community is in an excellent position to know how best to serve that community. But ARN is troubled about how the Commission would measure an applicant's ascertainment effort. The history of the Commission's attempt to require formal ascertainment activities demonstrates how

easily the process can become a dry exercise in merely following the letter of the rule. Data was often gathered for the sake of tonnage with no regard for what it actually meant or what effect it should have on future programming. APTS/NPR fail to explain how they would fashion this comparative element to avoid that trap.

ARN suggests that reviewing the backgrounds, activities, accomplishments and achievements of the applicants and/or their principals will contribute a great deal toward assessing their familiarity with the needs and interests of the community. Applicants who lack a history of local residence or participation in the community could be allowed to demonstrate what genuine steps they have taken to educate themselves about the community and to ascertain its needs.

Knowledge of the local community is a relevant factor that should earn an applicant a comparative preference. But the Commission should be careful only to recognize material and legitimate ascertainment efforts and effects. The Commission should avoid fostering impractical and legalistic approaches to community ascertainment which do not produce real motivation for action.

ARN is also concerned about the semantics of the latter portion of APTS/NPR's third factor. They urge a preference for the applicant whose proposed program service "will enhance the intellectual, cultural, social and educational life of the community." The broadest possible interpretation should be assigned to the use of the term, "enhance," in this context. The judgment must be completely neutral in its perspective.

One man's enhancement may be another's detriment. ARN heartily subscribes to the broad principle which it assumes is being stated -- that any applicant worth its weight in salt should propose to make a significant contribution to the life of the community. But judging the quality of that contribution is a subjective process which the government should approach very gingerly.

ARN observes, in any event, that the best measure of the real potential for a significant contribution from an applicant's programming efforts is not in its promises for the future, but in its past track record -- if it has one. An applicant with a meritorious past broadcast record for serving its community well should be entitled to a comparative preference.

APTS/NPR's final relevant factor in calculating the comparative value of the first elements of the proposed issue is:

- (iv) whether the applicant has demonstrated that it has a reasonable prospect of effectuating its proposal.

Joint Comments, page 3. ARN does not agree that this factor as described should be a comparative criterion. It is essentially a restatement of the ordinary financial qualification issue -- which is and should remain a basic rather than a comparative issue. If the applicant is financially qualified, it will be able to effectuate its proposal. If not, it will fail. The Commission's application processing procedures already have mechanisms in place to determine whether an applicant is financially qualified. There is no need to determine degrees of

financial qualification. Those who can effectuate their plans should be held under active consideration. Those who cannot, should be simply dismissed. It would be an unnecessary use of resources by the Commission and applicants to delve into such evaluations on a comparative basis.

In accord with the foregoing, ARN urges the Commission to adopt comparative criteria which are -- as much as possible -- objectively measurable and at the same time to avoid -- as much as possible -- factors which lend themselves to unproductive, artificial, dry legalisms. It would be a sad waste of the applicants' and the government's resources to litigate comparative hearing cases merely to prove which applicant has the glossiest, sleekest artificial exterior, without regard for the real inner substance that will ultimately determine whether the public is better served. Such a waste would be a disservice to the public as well.

Respectfully submitted,

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May 31, 1995


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